

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 19, 2012

In the Matter of H. M. TRELLA, Minor.

No. 304452

Wayne Circuit Court

Family Division

LC No. 00-388272

Before: JANSEN, P.J., and WILDER and K.F. KELLY, JJ.

PER CURIAM.

Respondent mother appeals as of right from a circuit court order terminating her parental rights to her fifteen-year-old minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (child would likely be harmed if returned to the parent).¹ We affirm.

I. PROCEDURAL HISTORY

In April 2000, the Department of Human Services (DHS) filed a petition for temporary custody of four-year-old H.M. after H.M. made statements regarding sexual abuse by respondent's boyfriend, Raymond. The court appointed the child's paternal grandmother as full guardian in July 2000 and the case was dismissed. Apparently the guardianship was dissolved in 2006 and H.M. went to live with her father.

DHS filed a second petition for temporary custody of H.M. (now age twelve) in November 2008. H.M. complained that her father struck her in the face in the fall of 2007, at which time she went to live with respondent and her respondent's live-together partner (LTP) (not the same man that had allegedly sexually assaulted her in 2000). H.M. was described as angry and hostile and was diagnosed with oppositional defiant disorder. She was not doing well in school and was suspended several times because of her behavior and truancy. Following the preliminary hearing, the court authorized the petition and placed H.M. with a maternal great aunt.

¹ The parental rights of the child's father were also terminated, but he is not participating in this appeal.

The adjudication hearing took place in January 2009. The CPS worker testified that while H.M. was living with respondent she was failing most of her 7th grade classes. Respondent appeared to act more as H.M.'s "best friend or buddy" rather than her mother. The petition was filed because the agency believed that both parents needed parenting training and H.M. needed counseling. Also, H.M. "needed to be with somebody who would be consistent about making her go to school and about correcting her school academic performance and behavior in the school." The court declined to find physical abuse by the father or "poor parenting of a normal nature." It determined that it had jurisdiction because H.M. had "special needs based on emotional issues" and those needs "were not being addressed appropriately in either the mother or the father's home."

At the time of the February 2009 dispositional hearing, H.M. had been suspended from school again for one day. According to the court report, respondent was "involved with" H.M.'s education and "attempting to encourage positive behavior." She was visiting with H.M. daily. The parent/agency agreement (PAA) called for respondent to attend family counseling, attend individual counseling, attend parenting classes, obtain a GED, and learn to budget income.

The family was seen at the Clinic for Child Study in April 2009. Respondent was described as showing "very little insight into how her partnerships, alcohol or substance usage negatively affects her relationship with her daughter." The evaluator concluded, "While both parents are somewhat overly self-focused and, at least intermittently, place their own needs ahead of those of their daughter, [respondent] appears somewhat further from acknowledging the extent of her difficulties, and her prognosis is poor." Counseling and drug screens were recommended.

By the May 2009 review hearing, respondent had begun family and individual counseling and was visiting H.M. daily. H.M. had been suspended again for a day.

At the time of the August 2009 review hearing, respondent was attending parenting classes and counseling and visiting H.M. daily. H.M. was slated to repeat the seventh grade in the fall. She dropped out of counseling and the court ordered her to return.

By the November 2009 review hearing, respondent completed all services except family counseling and began "to utilize interventions identified" and develop "coping skills for controlling and managing her emotions." H.M., however, had regressed. She refused to attend counseling, acted up in school, was suspended four times, and was "in detention at least once a week." Despite respondent's progress, the court did not order H.M. to return home because it doubted that respondent could control her. It warned H.M. to straighten up or she might find herself facing placement in a residential treatment facility.

H.M. improved by the December 16, 2009, permanency planning hearing. She was behaving in school and was referred back to counseling. The only barrier to reunification was the need to complete family counseling, which could not begin until H.M. was deemed ready by her individual counselor.

H.M. continued to make progress. At the time of the March 2010 review hearing, H.M. was in counseling and doing well. A return to respondent's home was not recommended because

Children's Protective Services (CPS) was investigating an allegation that respondent's LTP had physically abused H.M. During the investigation, respondent's home was found "to have an odor of animals, piles of clutter throughout, . . . dirty dishes in the sink and no food in the refrigerator." In addition, the bedroom designated for H.M. lacked furniture and was being used for storage.

At the time of the June 2010 review hearing, H.M. was still doing well. However, her relationship with respondent had deteriorated and she did not want to have any contact with respondent or engage in family counseling with her. The CPS matter was denied, but a subsequent home assessment showed that the home conditions were the same as mentioned in the CPS case. Respondent was given a week to clean the home and some progress was made.

H.M.'s relationship with respondent never improved and she did not want to return home. Her great aunt filed a petition for guardianship, but it was denied because the judge "didn't believe that it was permanent enough" and instead recommended that DHS file a termination petition. H.M. wanted to be adopted by her aunt.

DHS filed a supplemental petition for termination in January 2011. It alleged that although respondent had completed services, H.M. was fearful of being in the home with her mother's LTP and wanted respondent's parental rights to be terminated. In addition, respondent had not contacted the agency "regarding provisions that have been made for H.M.'s return . . . home" and had not contributed to the child's financial support.

II. THE TERMINATION HEARING

H.M. testified that she was 15 years old and in the ninth grade. Her grades were "average" and she was working to improve them. H.M. admitted that she was sent to the principal's office a few times already in 2011, but claimed that was "[b]efore I got my act together," which she did within the "last month."

H.M. testified that she currently lived with her great aunt. She had not lived with her parents since being placed in her aunt's home. When the petition for temporary custody was filed, H.M. was living with her mother, her mother's LTP, and their roommate. H.M. did not like living there because respondent and her LTP both drank alcohol to excess and they "would get into an argument and they would fight" quite often. In addition, the LTP was "too physical." He liked to hit H.M. "on the butt, and stuff like that," and he once smacked H.M. in the face on her birthday.

H.M. testified that when she lived with respondent, she did not attend school regularly. She explained that respondent "let me go when I wanted to" and H.M. rarely wanted to go to school. She testified that was the situation for "[t]he whole school year."

H.M. had not visited respondent since the summer of 2010 "[b]ecause I don't feel comfortable in my mom's house" and because respondent once did not come to visit H.M. when H.M. asked her to visit. H.M. never called respondent because she did not have respondent's telephone number and respondent had not called her in the last six months. Respondent sent H.M. a friend request on Facebook but H.M. ignored it. H.M. would not consider living with respondent unless respondent left her LTP.

H.M. testified that she liked living with her aunt because “[s]he’s the only one that does take care of me.” H.M. wanted to remain in her aunt’s home and be adopted by her aunt. She stated that her parents did not pay attention to her progress in school, did not help her with her homework, and did not give her any food or money.

Angelique Wright, the foster care worker since September 2009, testified that when she took over the case, H.M. “was getting into trouble on almost a daily basis in school.” After time with her great aunt, H.M. settled down and her behavioral problems decreased. She did so well academically that she was promoted from the seventh to the eighth grade during the prior school year and entered the ninth grade in the current school year. H.M. told Wright that she favored termination of her parents’ parental rights because they “don’t act like they want her” and “she’s happier with her aunt.”

Wright testified that because H.M. had been reluctant to visit her parents and “[t]he parents weren’t making any efforts to visit,” the court left it up to H.M. to decide whether to visit. Every time Wright met with H.M., she asked about visitation “and the answer was always no, she didn’t want to visit with her parents.” Respondent never contacted Wright to request visitation.

Wright testified that respondent was fully compliant with her PAA. She completed “everything,” and “[t]he reports from the therapist were all positive.” During conversations, respondent said she wanted to have H.M. return home, but Wright said, “there’s no action behind that.” For example, the bedroom designated for H.M. was not furnished and had never been made ready for occupancy.

Wright testified that respondent did not give H.M. any birthday or Christmas gifts, did not contribute to H.M.’s financial support, and did not provide any food or clothing for her. Respondent was unemployed and Wright never discussed the issue of child support with respondent. Wright did not foresee reunification within a reasonable time and recommended termination of parental rights “because the family has not rectified the problems that brought the child into care. And the child’s emotional state is not the same when the issue is to return to the parent; it wouldn’t be the same.”

Respondent testified that she did not know why H.M. was removed from her home and never saw a copy of the initial petition. Respondent lived with her LTP in his home; they had been together for 10 years. The house had three bedrooms, one of which had been set aside for H.M. It had always had a bed, but Wright “didn’t ask to see the bedroom.” Respondent’s LTP owned the home outright, but was two years’ delinquent on his property taxes.

Respondent testified that she was unemployed. She last worked in 2008, doing sorting work in a warehouse; the job ended when “[t]hey shipped it to Dearborn.” Respondent’s LTP was also unemployed. Respondent received \$200 a month in food stamps and she and her LTP did “odd jobs” such as cutting grass, raking leaves, shoveling snow, and cleaning houses to support themselves. Respondent recently earned \$100 shoveling snow. Respondent admitted that she did not contribute to H.M.’s support “because she doesn’t live with me” and because her aunt “receives assistance for her.” She did not buy H.M. any birthday or Christmas presents, explaining that it was pointless to buy presents for someone who wanted nothing to do with her

and that “I’m not going to buy a child’s love.” Respondent sent H.M. a birthday greeting on Facebook. She did not visit H.M. since December 2009.

Respondent testified that she was unaware H.M. was uncomfortable with her LTP. She claimed they “used to be the best of friends.” Respondent as willing to leave her LTP if that was the only way to have H.M. return home. It would take at least a month to find somewhere else to live, but respondent promised to leave within 30 days.

The court adjourned the case for a month to see if respondent would, in fact, sever her relationship with her LTP. It also ordered both parents to submit to a drug screen by the end of the day.

Respondent did not appear when the hearing resumed. Wright testified that respondent called her to say that she could not attend the hearing because she had a job interview and a doctor’s appointment. Respondent did not leave her LTP and was still living with him. Her drug screen following the last hearing was negative.

The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). She now appeals as of right.

III. STANDARD OF REVIEW

A trial court’s finding that a statutory ground for termination has been proven by clear and convincing evidence, and its decision regarding the child’s best interests, are both reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

IV. ANALYSIS

The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err in terminating respondent's parental rights under all three of the enumerated subsections. The trial court's findings focused on respondent's failure to provide financial support for H.M., her failure to maintain a relationship with H.M., and her continued relationship with her LTP, who had a drinking problem and had physically abused H.M. However, the condition that led to the adjudication was respondent's inability to respond to and appropriately address H.M.'s emotional and behavioral problems, which were interfering with her education. At the adjudication hearing, the trial court noted that H.M. had "special needs based on emotional issues" and those needs "were not being addressed appropriately in either the mother or the father's home." Although it appears that the ultimate barrier to reunification was the breakdown of the parent/child relationship, the condition that led to the adjudication continued to exist.

Respondent successfully completed parenting classes and individual therapy. H.M., with the benefit of time, counseling, and a change of environment, settled down and was doing well in school. However, respondent, by her conduct, demonstrated a continued inability to meet H.M.'s emotional needs. This is evidenced by respondent's failure to visit, failure to maintain contact, failure to leave her LTP as promised, and failure to even attend the last hearing. Respondent may have complied with her PAA, but she did not exhibit any improvement or ability to care for or properly supervise H.M. Respondent would not be able to respond to and appropriately address H.M.'s emotional and behavioral problems, which historically interfered with her education.

Additionally, H.M.'s testimony indicated that she was unhappy in respondent's home due to problems with the LTP, which were more than just a mere personality conflict or disagreement over house rules. She testified that the LTP went to the liquor store daily, that he and respondent would drink alcohol daily, and that their drinking often led to fights. She also testified that the LTP "would be down on" her when he was drinking and sometimes became physically abusive. Respondent did not follow through on her promise to end the relationship, an indication that H.M. was likely to suffer both emotional and physical harm if returned to respondent's home.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, *In re BZ*, 264 Mich App at 301, the child's "need for permanency, stability, and finality," *In re Gillespie*, 197 Mich App 440, 446-447; 496

NW2d 309 (1992), and the advantages of a foster home over the parent's home. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

The trial court did not clearly err in finding that termination of respondent's rights was in H.M.'s best interests. It was clear that the parent/child relationship had deteriorated significantly. Both mother and daughter testified, but neither expressed any affection for the other. H.M. had no interest in visiting with respondent, which respondent plainly resented. H.M. favored termination of her parents' parental rights and testified that she wanted to remain with, and be adopted by, her great aunt. Although the relationship may have been salvageable had respondent left her LTP, she did not do so when given the opportunity and did not even come to court to explain her reasons for not doing so. Given the circumstances, the trial court did not clearly err in finding that termination was in the child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly